

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 12

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO DOMESTIC AFFAIRS; ENACTING THE DOMESTIC PARTNER
RIGHTS AND RESPONSIBILITIES ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Domestic Partner Rights and Responsibilities Act".

Section 2. DEFINITIONS.--As used in the Domestic Partner
Rights and Responsibilities Act:

A. "affidavit of domestic partnership" means an
affidavit that identifies domestic partners and affirms that
both domestic partners meet the requirements for entering into
a domestic partnership with each other according to the
provisions of the Domestic Partner Rights and Responsibilities
Act;

B. "certificate of domestic partnership" means a

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1 certificate issued by the county clerk on behalf of the state
2 certifying that the domestic partnership has been registered;

3 C. "domestic partner" means any adult, regardless
4 of physical, behavioral or developmental disability or sex, who
5 is in a relationship of mutual support and who has established
6 a domestic partnership;

7 D. "domestic partnership" means a legal
8 relationship that is not marriage that two domestic partners
9 establish with each other according to the provisions and
10 requirements of the Domestic Partner Rights and
11 Responsibilities Act;

12 E. "record of domestic partnership" means a
13 permanent record book kept by the county clerk of each county
14 for the purpose of properly recording and indexing affidavits
15 and certificates of domestic partnerships and ensuring that the
16 affidavits and certificates of domestic partnerships are kept
17 as county records; and

18 F. "registration fee" means twenty-five dollars
19 (\$25.00) to be paid by the domestic partners to the county
20 clerk at the time of submitting an affidavit of domestic
21 partnership.

22 Section 3. PROTECTIONS, OBLIGATIONS, BENEFITS AND
23 RESPONSIBILITIES--EXCEPTIONS.--

24 A. Domestic partners shall be subject to the same
25 legal obligations, rights and responsibilities and shall be

1 entitled to the same protections and benefits as are afforded
2 or recognized by the laws of the state to persons entering into
3 a civil contract as contemplated by Section 40-1-1 NMSA 1978
4 and all the obligations, rights and responsibilities that flow
5 from that contract, whether they derive from statute,
6 administrative or court rule or regulation, policy, common law,
7 equity or any other source of civil or criminal law. The
8 Domestic Partner Rights and Responsibilities Act shall not
9 repeal or adversely affect any other manner in which
10 relationships between adults may be recognized or given effect
11 in New Mexico, or the legal consequences of those
12 relationships.

13 B. Notwithstanding the provisions of this section,
14 taxable status shall be governed as follows:

15 (1) in filing a state income tax return, a
16 domestic partner shall use the same filing status as is used on
17 a federal income tax return filed in the same tax year, or
18 would have been used if a federal income tax return had been
19 filed in the same year. A domestic partner's income and
20 earnings shall not be treated as community property for state
21 income tax purposes; and

22 (2) nothing in this section requires or
23 permits the extension of any tax benefit if the extension of
24 the tax benefit would conflict or be inconsistent with
25 provisions of the Internal Revenue Code of 1986, as amended, or

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1 regulations issued under that code.

2 Section 4. JURISDICTION.--

3 A. The district court shall have jurisdiction over
4 any proceeding relating to domestic partnership.

5 B. In accordance with the consent acknowledged by
6 the domestic partners in the affidavit of domestic partnership,
7 if no other forum is available with comparable remedies to
8 address distribution of assets, debts, support, as well as any
9 other issues related to a domestic partnership registered in
10 this state, the district court shall have jurisdiction even if
11 neither party is a resident of, or maintains a domicile in, the
12 state at the time the proceedings are filed.

13 C. A petition addressing domestic partnership
14 issues may be filed in the district court of the county in
15 which the petitioner or respondent resides or last resided or
16 in the county in which the domestic partnership is registered.

17 D. Nothing in this section shall be construed as
18 granting jurisdiction in conflict with the Uniform Child-
19 Custody Jurisdiction and Enforcement Act or the Uniform
20 Interstate Family Support Act as adopted in New Mexico.

21 Section 5. RECIPROCITY.--A domestic partnership, civil
22 union or a substantially similar legal relationship entered
23 into in another jurisdiction shall be afforded the same rights
24 in New Mexico as a domestic partnership as defined in the
25 Domestic Partner Rights and Responsibilities Act.

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1 Section 6. RELIGIOUS FREEDOM.--Nothing in the Domestic
2 Partner Rights and Responsibilities Act shall interfere with or
3 regulate the religious practice of any religious entity. No
4 religious entity or federally recognized Indian nation, tribe
5 or pueblo shall be required to recognize, solemnize or witness
6 a domestic partnership.

7 Section 7. COUNTY CLERK--DUTIES.--

8 A. A county clerk shall provide an affidavit of
9 domestic partnership form to individuals prepared to establish
10 a domestic partnership.

11 B. A county clerk shall receive a registration fee
12 of twenty-five dollars (\$25.00) for issuing and recording a
13 certificate of domestic partnership.

14 C. A county clerk shall accept the affidavit of
15 domestic partnership when it is submitted and shall issue and
16 record a certificate of domestic partnership.

17 D. Each county shall maintain a record of domestic
18 partnership at the expense of each respective county in the
19 state for the purpose of recording and indexing affidavits and
20 certificates of domestic partnerships as county records.

21 Section 8. ESTABLISHING A DOMESTIC PARTNERSHIP--
22 CERTIFICATE.--

23 A. A domestic partnership is established when the
24 affidavit of domestic partnership is accepted by a county clerk
25 and the certificate of domestic partnership is issued and

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1 recorded.

2 B. To obtain a certificate of domestic partnership,
3 individuals shall:

4 (1) appear in person and submit an affidavit
5 of domestic partnership to a county clerk on a form that
6 conforms with the requirements of the Domestic Partner Rights
7 and Responsibilities Act stating that the two individuals
8 desire to become domestic partners and that they:

9 (a) have reached the age of majority;

10 (b) are capable of consenting to the
11 domestic partnership;

12 (c) are not married and are not part of
13 another domestic partnership with someone else or civil union
14 with someone else; and

15 (d) are not related by blood in a way
16 that would violate Section 40-1-7 NMSA 1978;

17 (2) provide a mailing address;

18 (3) consent to the jurisdiction of the
19 district courts of New Mexico for the purpose of a proceeding
20 related to the domestic partnership;

21 (4) declare that representations made in the
22 form are true, correct and contain no material omission of fact
23 to the best knowledge and belief of each individual;

24 (5) notarize the affidavit of domestic
25 partnership and deliver the affidavit to a county clerk for

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1 signature and recording according to the instructions provided
2 on the affidavit; and

3 (6) pay the required registration fee of
4 twenty-five dollars (\$25.00).

5 C. Upon receipt of the affidavit of domestic
6 partnership, the county clerk shall immediately issue a
7 certificate of domestic partnership and record and index the
8 certificate in the record of domestic partnership as part of
9 the county records. After recording, a certificate of domestic
10 partnership shall be provided to the domestic partners.

11 D. The requirement in Subsection B of this section
12 that the individuals appear in person shall be waived for one
13 of the individuals if a document executed by that individual is
14 presented to the county clerk. The document shall include a
15 notarized statement authorizing a domestic partnership with the
16 individual appearing in person.

17 Section 9. MISREPRESENTATION OF DOMESTIC PARTNERSHIP
18 ELIGIBILITY--PENALTY.--Filing an intentionally and materially
19 false affidavit of domestic partnership shall be punishable as
20 a misdemeanor.

21 Section 10. AFFIDAVIT AND CERTIFICATE OF DOMESTIC
22 PARTNERSHIP--FORMS.--

23 A. To ensure a uniform system of records of all
24 domestic partnerships, an affidavit of domestic partnership and
25 a certificate of domestic partnership shall be substantially as
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1 provided in this section, with each form to be numbered
2 consecutively corresponding with the page number of the record
3 of domestic partnership in the county clerk's office. All such
4 forms shall be provided free of cost by the county.

5 B. The affidavit of domestic partnership form shall
6 be substantially as follows:

7 "AFFIDAVIT OF DOMESTIC PARTNERSHIP NO. ____
8 STATEMENTS RECEIVED AND FILED IN THE COUNTY CLERK'S OFFICE
9 AT ____ O'CLOCK ____ .M. ON _____, 20__.
10 COUNTY CLERK, _____ COUNTY
11 By _____ Deputy

12 To the county clerk:

13 We the undersigned hereby intend to be united in a
14 domestic partnership and certify the following.

15 Each of us has reached the age of majority.

16 Each of us is capable of consenting to this domestic
17 partnership.

18 Neither of us is married or is part of another
19 domestic partnership with someone else or civil union with
20 someone else that has not been terminated, dissolved or
21 adjudged a nullity.

22 We are not related by blood in a way that would
23 violate Section 40-1-7 NMSA 1978.

24 Each of us consents to the jurisdiction of the
25 district courts of New Mexico for the purpose of a proceeding

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1 related to this domestic partnership or to domestic partners'
2 rights and obligations, even if one or both of us do not reside
3 in the state.

4 The representations here are true and correct and
5 contain no material omission of fact to the best of our
6 knowledge and belief.

7	Individual 1	Individual 2
8	Full name:	Full name:
9	_____	_____
10	Date of birth:	Date of birth:
11	_____	_____
12	Place of birth:	Place of birth:
13	_____	_____
14	Present address:	Present address:
15	_____	_____
16	_____	_____
17	Signature:	Signature:
18	_____	_____

19 State of New Mexico
20 County of _____

21 Subscribed and sworn to before me this _____ day of
22 _____, 20____.

(Seal)

24 _____
25 County Clerk

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1 On _____, 20___, before me _____, Notary Public,
2 acknowledge that _____ and _____
3 personally appeared and have proved to me with satisfactory
4 evidence to be the persons whose names are subscribed to the
5 affidavit of domestic partnership.

6 WITNESS my hand and official seal.

7 _____
8 Signature of Notary Public
9 (PLACE NOTARY PUBLIC SEAL HERE)

10 FILE NO. _____".

11 C. The certificate of domestic partnership form
12 shall be substantially as follows:

13 "CERTIFICATE OF DOMESTIC PARTNERSHIP

14 State of New Mexico,

15 ss.

16 County of _____.

17 _____ of _____ and

18 Partner 1 Address

19 _____ of _____

20 Partner 2 Address

21 are hereby recognized as domestic partners in accordance
22 with the laws of the state of New Mexico and the Domestic
23 Partner Rights and Responsibilities Act.

24 Recorded this _____ day of _____, 20___,
25 at _____ o'clock _____ .M.

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1 Record of Domestic Partnership Book No. ____, Page No. __.

2 _____
3 County Clerk".

4 Section 11. LIBERAL CONSTRUCTION.--The Domestic Partner
5 Rights and Responsibilities Act shall be liberally construed to
6 carry out its provisions.

7 Section 12. SEVERABILITY.--If any part or application of
8 the Domestic Partner Rights and Responsibilities Act is held
9 invalid, the remainder or its application to other situations
10 or persons shall not be affected.

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